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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

R.B., Petitioner and Respondent, v. D.T., Appellant.	2d Civ. No. B293668 (Super. Ct. No. D387696) (Ventura County)

R.B. and D.T. began a romantic relationship in 2008 and lived together off and on over the next 10 years. The most recent cohabitation period was from November 2016 through May 2018. The couple never married.

D.T. gave birth to a son, C.B., in September 2015. Believing he was the child's biological father, R.B. signed a voluntary declaration of paternity under Family Code section

7571, subdivision (a).[1] He rescinded the declaration after discovering he is not the child's biological father.[2]

R.B. and D.T. continued to cohabitate until March or April 2016. During that period, D.T. became pregnant with the couple's daughter, B.T. After a series of escalating domestic incidents, R.B. moved out of his home and D.T. sought and obtained a domestic violence temporary restraining order (DVTRO) against R.B.

D.T. and her son moved to Arizona to live with her parents. After B.T.'s birth in September 2016, D.T. and the children returned to R.B.'s home in California. When the couple permanently separated in May 2018, R.B. filed a petition to establish a parental relationship with C.B. He alleged he is the child's presumed father under section 7611, subdivision (d) because he received C.B. into his home and openly held him out as his natural child.

Following an evidentiary hearing, the trial court determined R.B. is entitled to presumed parental status under section 7611, subdivision (d). D.T., who is appearing in propria

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[1] All further statutory references are to the Family Code unless otherwise stated.

[2] In 2018, the Uniform Parentage Act (§ 7600 et seq.) was amended, largely to replace the word "paternity" with "parentage." (Stats. 2018, c. 876 (A.B. 2684, §48, eff. Jan. 1, 2020.) Because most of the amendments are minor and not relevant to the issues on appeal, we cite primarily to the current statutory scheme. Under current law, however, R.B. would have signed a "voluntary declaration of parentage" rather than a "voluntary declaration of paternity." To avoid confusion, we refer to the document he actually signed and rescinded.

persona, contends the court erred because (1) R.B.'s rescission of the voluntary declaration of paternity rendered him ineligible to subsequently seek presumed parental status and (2) R.B. failed to establish he had unambiguously received C.B. into his home. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In addition to seeking to establish a parental relationship with C.B., R.B sought legal and physical custody of both children and an order prohibiting D.T. from removing the children from the state absent a court order. After receiving R.B.'s petition, D.T. took the children to Arizona. At R.B.'s request, the trial court awarded R.B. temporary custody of the children with no visitation by D.T., ordered the children's return to California and requested the assistance of Arizona law enforcement.

D.T. objected to these orders. R.B. sought a DVTRO against D.T., which the trial court granted. The court scheduled an evidentiary hearing to consider R.B.'s petition to establish a parental relationship with C.B., his request for a three-year domestic violence restraining order against D.T. and various other issues regarding custody and visitation.

The trial court noted that since R.B. had rescinded the voluntary declaration of paternity as permitted by statute, there was no existing presumption or judgment of parentage. The only issue regarding the parentage petition, therefore, was whether R.B. is C.B.'s biological parent and, if not, whether he is the presumed father. The parties stipulated that R.B. is not the biological father.

R.B. represented himself at the evidentiary hearing on September 26, 2018. D.T. was represented by counsel, but was permitted to cross-examine R.B. It is undisputed R.B. was

present at C.B.'s birth. He cut the umbilical cord, gave C.B. his surname, and was listed on the birth certificate and medical records as C.B.'s father. He also executed a voluntary declaration of paternity.

About 30 days after C.B.'s birth, D.T. informed R.B. he was not the biological father. The record does not disclose the biological father's identity. The couple's relationship began to deteriorate with D.T. threatening to take C.B. to Arizona and to seek child support based on the voluntary declaration of paternity. R.B. elected to rescind the declaration within the 60-day period allowed by section 7575, subdivision (a).

Notwithstanding the rescission, the couple continued to live together for another six or seven months. R.B. treated C.B. as his son. After R.B. moved out of his home in April 2016, D.T. obtained a DVTRO against him.

R.B. testified that over the next four or five months, D.T. rebuffed his attempts to see C.B. He also was concerned about violating the DVTRO. R.B. admitted that at one point he did try to distance himself from C.B. because of the discord with D.T. He also told the police on one occasion that C.B. is not his "biological" son, which is true.

Late in her pregnancy with B.T., D.T. moved to Arizona. After she left, R.B. travelled to Arizona almost every weekend. He sent money to D.T.'s mother to help support C.B. and arrived within hours of B.T.'s birth.

R.B., D.T. and the two children then returned to R.B.'s home in California. R.B. testified he was always "daddy" to C.B. D.T. admitted that in the ten months or so before the evidentiary hearing, C.B. referred to R.B. as "father" or "daddy" and conceded they have a close relationship.

In response to questioning by the trial court, R.B. stated that when he comes home from work, "[I am] fully engaged with my children completely. It's the best part of my day and seems to be the best part of theirs. They are very energized when I get home. . . . We usually play for a half hour, 45 minutes, make some dinner, play again, brush some teeth, settle down, read some books, go to work. Over the weekend I make it a priority to make sure they are having fun. We go – I had to take them on outings myself because she [D.T.] wouldn't go. So I took it upon myself to do that . . . . I've held him out as my son from before he was born . . . ."

R.B. has taken C.B. to work and introduced him to co-workers as his son. He has C.B.'s artwork in his office. Both children are named as occupants on his residential lease agreement, and R.B. testified that he has signed C.B.'s medical records as his father and contributed financially to his well-being. He stated that "[e]very dollar [C.B.] has ever used has come from me as far as I know. His emotional stability, I take responsibility for."

The trial court noted this "[u]ndoubtedly . . . is a very emotional issue," but found that R.B. qualifies as a presumed father under section 7611, subdivision (d). The court acknowledged "there's been a lot of testimony about the timeframes, but one of the seminal cases, Charisma R., I believe versus Christina S. [sic.], does not require any particular timeframe to hold a child out. For instance, as relevant to the receives element, there isn't any particular requirement that the receiving and the holding out be for any particular duration of time." The court entered judgment accordingly.

At the subsequent hearing on R.B.'s petition for a domestic violence restraining order, R.B. testified that D.T. assaulted his mother in front of the children, broke into his home one night, threatened him with a tire iron and recklessly drove away with C.B. in her car during a visitation exchange. The trial court issued a three-year restraining order against D.T. with only R.B. and his mother as the protected persons.

DISCUSSION

D.T. argues R.B. repudiated his right to seek presumed parental status under section 7611, subdivision (d) when he rescinded the voluntary declaration of paternity. She also claims the evidence does not support the trial court's finding that R.B. is entitled to presumed parental status under that subdivision. We reject both contentions.

Standard of Review

Under the Uniform Parentage Act (§ 7600 et seq.), if the mother and alleged father of a child are not married, parentage can be determined by genetic testing (§ 7550 et seq.), by a voluntary declaration of parentage executed by the person identified by the natural mother as the natural father (*id.*, § 7571 et seq.), or by a presumption in favor of one who "receives the child into [his or her] home and openly holds out the child as [his or her] natural child." (§ 7611, subd. (d); *In re Levi H.* (2011) 197 Cal.App.4th 1279, 1286.)

"One who claims he [or she] is entitled to presumed [parent] status has the burden of establishing, by a preponderance of the evidence, the facts supporting that entitlement." (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1210 (*T.R.*).) If that burden is met, the burden shifts to the other party

to rebut the presumption by clear and convincing evidence. (*Ibid.*)

On appeal, we independently interpret statutes, but review factual findings regarding parentage under section 7611 for substantial evidence. (*In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1088; *R.M. v. T.A.,* (2015) 233 Cal.App.4th 760, 780 (*R.M.*).) "We view the evidence in the light most favorable to the ruling, giving it the benefit of every reasonable inference and resolving all conflicts in support of the judgment. [Citation.] We defer to the trial court's credibility resolutions and do not reweigh the evidence. [Citation.] If there is substantial evidence to support the ruling, it will not be disturbed on appeal even if the record can also support a different ruling." (*R.M.*, at p. 780.)

R.B.'s Rescission of the Voluntary Declaration of Paternity Did Not Disqualify Him from Seeking Presumptive Parental Status

The presumption of paternity created by the signing of a voluntary declaration of paternity is a conclusive presumption. Unless rescinded or set aside, the voluntary declaration of paternity has the same force and effect as a judgment of parentage issued by a court of competent jurisdiction. (§ 7573; *Kevin Q. v. Lauren W.* (2009) 175 Cal.App.4th 1119, 1132 (*Kevin Q.*).)

Section 7575, subdivision (a) allows either parent to rescind a voluntary declaration of paternity within 60 days of its execution by filing a rescission form. The parent is not required to state a reason for the rescission. (See *ibid.*)

D.T. does not dispute that R.B. rescinded the voluntary declaration of paternity within the 60-day deadline. (§7575, subd. (a).) Given its timely rescission, the declaration never

became the equivalent of a judgment of parentage. (§ 7573; *Kevin Q.*, *supra*, 175 Cal.App.4th at p. 1132.)

D.T. has not cited any authority suggesting that the rescission of a voluntary declaration of paternity within the statutory deadline precludes a parent from subsequently seeking presumptive parental status under section 7611, subdivision (d). To the contrary, there are no time limits or standing requirements for challenging, or asserting, such a presumption. "Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the [father] and child relationship presumed under subdivision (d) or (f) of Section 7611." (§ 7630, subd. (b).)

As R.B. points out, under current law, "[a] person's offer or refusal to sign a voluntary declaration of parentage may be considered as a factor, but shall not be determinative, as to the issue of legal parentage in a proceeding regarding the establishment or termination of parental rights." (§ 7612, subd. (e).) Since that statute did not exist at the time of the 2018 evidentiary hearing, it has no application here. (See Stats. 2018, c. 876 (A.B. 2684, §48, eff. Jan. 1, 2020.)

In the absence of any contrary authority, we conclude R.B.'s timely rescission of the voluntary declaration of paternity did not preclude him from seeking presumptive parental status under section 7611, subdivision (d).

Substantial Evidence Supports the Trial Court's Finding of Presumptive Parental Status

In determining whether a man has met his burden of establishing, by a preponderance of the evidence, that he has received the child into his home and openly held the child out as his own, "the court may consider a wide variety of factors" (*R.M.*,

supra, 233 Cal.App.4th at p. 774), all of which bear on the extent to which the man "'"has lived with [the] child, treating [the child] as his son or daughter, [and] has developed a relationship with the child that should not be lightly dissolved."'" (*Susan H. v. Jack S.* (1994) 30 Cal.App.4th 1435, 1443, quoting *Estate of Cornelious* (1984) 35 Cal.3d 461, 465-466.) These factors include "the [man]'s provision of physical and/or financial support for the child, efforts to place the person's name on the birth certificate, efforts to seek legal custody, . . . the breadth and unequivocal nature of the person's acknowledgement of the child as his or her own" (*R.M.*, at p. 774), "whether the man actively helped the mother in prenatal care," "whether and how long he cared for the child," "the number of people to whom he had acknowledged the child," and "whether he provided for the child after [the child] no longer resided with him." (*T.R.*, *supra*, 132 Cal.App.4th at p. 1211.) No single factor is dispositive; "rather, the court may consider all the circumstances." (*R.M.*, at p. 774.)

The trial court considered these factors, all of which weigh in R.B.'s favor. R.B. lived with D.T. during her pregnancy with C.B.; he was present at the child's birth and named himself as the child's father on the birth certificate and medical records; he lived with D.T. and C.B. for six or seven months after learning he is not the child's biological father; he told others, including co-workers that C.B. is his son; he sent money to D.T.'s mother to help support C.B. after D.T. took him to Arizona; and he visited Arizona almost every weekend until B.T. was born in September 2016. At that point, R.B., D.T. and the children returned to R.B.'s home in California, where they lived as a family until May 2018. R.B. worked to support the family while D.T. cared for the

children. (See *R.M.*, *supra*, 233 Cal.App.4th at p. 774; *T.R.*, *supra,* 132 Cal.App.4th at p. 1211.)

As the trial court observed, the "receipt of the child into the home must be sufficiently unambiguous as to constitute a clear declaration regarding the nature of the relationship, . . . it need not continue for any specific duration." (*Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 374, disapproved on another point by *Reid v. Google, Inc.* (2010) 50 Cal.4th 512.) R.B. acknowledged he had distanced himself from C.B. for four or five months after moving out of his home in April 2016, but that situation was remedied when the family reconciled before B.T.'s birth in September 2016. Before R.B. and D.T. finally split in May 2018, R.B. had lived with C.B. for a total of 26 months, far outweighing the four- or five-month break in 2016.

In sum, the evidence was more than sufficient to shift the burden to D.T. to rebut the presumption of parental status by clear and convincing evidence. (See *T.R.*, *supra*, 132 Cal.App.4th at p. 1210.) D.T. failed to meet that burden. For reasons previously discussed, we are not persuaded by her argument that C.B.'s timely rescission of the voluntary declaration of paternity is sufficient to rebut the presumption of parentage in section 7611, subdivision (d), particularly given the heightened clear and convincing standard. Moreover, rebutting that presumption is not appropriate if it "will render the child fatherless" (*In re Nicholas H.* (2002) 28 Cal.4th 57, 70), or "deprive [the child] of the support of their second parent." (*Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 122.) A reversal of the trial court's decision would unfortunately accomplish both.

DISPOSITION

The judgment dated September 28, 2018 is affirmed. R.B. shall recover his costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Joann Johnson, Judge
Superior Court County of Ventura

D.T., in pro. per, for Appellant.

The Law Office of Herb Fox, Herb Fox, for Petitioner and Respondent.